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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 14 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a school psychology consultant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work:

> The Petitioner . . . is an internationally-renowned and published School Psychologist and former Chairperson of the Department of General Psychology of Hudjant University, in Tajikistan. Throughout her career in the field of School Psychology, [the petitioner] has been internationally published and has made significant contributions to both the teaching methods in the field as well as furthered the understanding of student-based psychological research. . . .
>
> [The petitioner] intends to play a leading role in advising on, as well as undertaking, the design and implementation of a revamped system for institutional and public education in the field of School Psychology. . . .
>
> [The petitioner's] unique geographical, multi-political and multi-cultural student analysis provided an insight into student psychological development which is otherwise unattainable in other more homogeneous societies throughout the world.

The petitioner submits a list of articles she has written. The record does not contain the articles themselves nor any evidence that the articles were published, rather than simply stored in the

archives of the universities where the petitioner wrote them. The record also fails to establish the research community's reaction to those articles (for instance, in the form of citations).

The petitioner also claims to have received four awards for her work. As with the articles, the record contains no evidence to corroborate or clarify the petitioner's claims. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner submits letters from her previous employers and former professors. Some of these individuals express satisfaction with the petitioner's abilities but do not show that the petitioner stands out from her peers to an extent that would justify a national interest waiver. Others offer more specific information. [redacted] department assistant administrator at the Samara Regional Center for Professional Education, states that the petitioner "possesses a unique ability to successfully direct and progress a dialogue with children," and "retains a unique gift in interpretation of new scientific ideas in psychology and pedagogy and their transmission to teachers and parents in the course of lectures." [redacted] states that the petitioner's work is "valuable . . . for the pedagogical community working in the conditions of a multicultural environment."

Professor G.M. Aphonina of Taganrog State Pedagogical Institute states that the petitioner "has become the author of a whole new direction in the work of Russian schools and universities – management of out-of-school interests as a socio-cultural environment and a base for personal development." Professor N.U. Postaluk, director of the Samara Regional Center for Professional Education, asserts that the petitioner's work in this area is "widely used today throughout the pedagogical practice in Russia."

The above witnesses offer strong praise for the petitioner's work, but they all appear to have worked directly with the petitioner. The initial submission contains no independent evidence to corroborate the claim that the petitioner's work has had an especially significant impact in her field.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits a personal statement which, counsel contends, addresses the director's concerns. A letter from the petitioner constitutes, in essence, a claim rather than evidence to support that claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California, supra.* Where the petitioner does mention other evidence in her letter, she refers to exhibits previously submitted with the initial filing of the petition, although the director had already advised the petitioner that such evidence was insufficient. The director had requested additional evidence, rather than simply an explanation of why the previous evidence should be afforded more weight.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work but finding that the petitioner has not submitted "evidence which substantiates that the petitioner's work will, in fact, provide prospective benefits which are predominantly national in scope." The director also found the petitioner has not demonstrated that her "contributions . . . are such that they measurabl[y] exceed those of her peers at this time."

Counsel argues, on appeal, that the petitioner's work is national in scope, in that the petitioner proposes "a new model of communication between teacher and student" that can be implemented nationally. The petitioner also claims to have published numerous articles, which can have a national effect through the circulation of journals. Because the petitioner's work is not specific to one particular school, but rather involves general policies and models that can be implemented in a variety of locations, the petitioner has satisfactorily demonstrated that her work is at least potentially national in scope.

Counsel, on appeal, states that the petitioner's "professional contribution would be national in scope, and therefore would justify the waiver." National scope, however, is only one prong of the national interest test described in *Matter of New York State Dept. of Transportation*. The director, in denying the petition, clearly indicated that the national scope issue was not the only basis for denial. Therefore, counsel is incorrect in asserting that the petitioner overcomes the denial merely by establishing the national scope of her work.

Counsel asserts that the petitioner's "new model for integrating foreign student[s] and recent immigrants, both culturally and educationally, will address and potentially remedy severe and continuing problems in our current educational system." This statement is nothing but speculation and conjecture. Reference to the petitioner's own description of her new model cannot suffice, because the effectiveness of the model is not determined by the petitioner's own estimation of her work. The petitioner has not shown that this model has been implemented at any U.S. school, nor has she submitted letters from independent experts familiar with the U.S. educational system, who are able to evaluate objectively the petitioner's model and compare it to systems currently in use.

The petitioner, on appeal, asserts that she has "a proven record in training teachers" and that her system has been "proven effective in several experimental Russian high schools in the cities of Moscow and Samara." The record does not indicate the reaction of observers outside of those cities, and the petitioner has not shown that the U.S. school system is sufficiently similar to the Russian system to allow the system to translate readily to the U.S. system. The petitioner states "I plan to continue my academic research and implement my findings in the education program at National-Louis University, University of Illinois at Chicago, or Northwestern University. . . . As a faculty member of one of these universities, I could directly impact the quality of instruction which future teachers provide." Again, this assertion is highly speculative; the petitioner has not demonstrated that any of those universities are in fact interested in employing her as a faculty member.

The petitioner's appellate submission includes a letter from Pat Michalski, the (Illinois) governor's assistant for Ethnic Affairs, who states "I have known [the petitioner's son] for several months through his work as a volunteer in my office. Thus I met his mother [the petitioner]. I am aware of her professional credentials and see a need for her services in the Russian and Ukrainian communities." Pat Michalski claims no expertise in school psychology, limits the value of the petitioner's work to specific ethnic communities, and appears to know of the petitioner only through the petitioner's son's volunteer work.

The petitioner's motivation and her confidence that she will achieve her goals are assets but her aspirations are not objective evidence of eligibility for a national interest waiver. At the time she filed the petition in June 2001, the petitioner had been in the United States for three years, having entered on a student visa in May 1998, but the record does not document any contributions that the petitioner has made during those three years. The record contains negligible objective evidence to show that the petitioner stands out from other dedicated professionals in her field to an extent that would justify a waiver of the job offer requirement that, by law, attaches to the immigrant classification she has chosen to seek.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.